

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ROBERTO DURAND,

Plaintiff,

v.

MARITZA,

Defendant.

Case 3:22-cv-00371-MMD-CLB

ORDER

*Pro Se* Plaintiff Roberto Durand brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Ely State Prison. (ECF No. 1-1.) On September 15, 2022, this Court ordered Durand to file a fully complete application to proceed *in forma pauperis* (“IFP application”) or pay the full \$402.00 filing fee on or before November 15, 2022. (ECF No. 3.) Durand was warned the action could be dismissed if he failed to file a fully complete IFP application with all three documents or pay the full \$402.00 filing fee for a civil action by that deadline. (*Id.* at 3.) When the November 15, 2022, deadline expired, Durand had not filed a fully complete IFP application or paid the full \$402.00 filing fee.

Durand submitted three incomplete applications to proceed *in forma pauperis*, which were each missing an inmate account statement for the previous six-month period. (ECF Nos. 4, 5, 6.) The Court considered meaningful alternatives to dismissal and issued another order on November 22, 2022, granting Durand one final opportunity to submit a fully complete IFP application that included an inmate account statement for the previous six-month period by the deadline of January 23, 2023. (ECF No. 7.) On November 29, 2022, and December 1, 2022, Durand once again submitted two incomplete IFP applications that did not include an inmate account statement for the previous six-month

1 period. (ECF Nos. 8, 9.) The January 23, 2023, deadline has now expired, and Durand  
2 still has not filed a fully complete IFP application or paid the full \$402.00 filing fee.

3 District courts have the inherent power to control their dockets and “[i]n the  
4 exercise of that power, they may impose sanctions including, where appropriate . . .  
5 dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831  
6 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court  
7 order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir.  
8 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to  
9 keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th  
10 Cir. 1987) (affirming dismissal for failure to comply with court order). In determining  
11 whether to dismiss an action on one of these grounds, the Court must consider: (1) the  
12 public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its  
13 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition  
14 of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*  
15 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting  
16 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

17 The first two factors, the public’s interest in expeditiously resolving this litigation  
18 and the Court’s interest in managing its docket, weigh in favor of dismissal of Durand’s  
19 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal  
20 because a presumption of injury arises from the occurrence of unreasonable delay in filing  
21 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542  
22 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of  
23 cases on their merits—is greatly outweighed by the factors favoring dismissal.

24 The fifth factor requires the Court to consider whether less drastic alternatives can  
25 be used to correct the party’s failure that brought about the Court’s need to consider  
26 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining  
27 that considering less drastic alternatives *before* the party has disobeyed a court order  
28 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th


1 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that  
2 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court’s  
3 order as satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled  
4 with the warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*).  
5 Courts “need not exhaust every sanction short of dismissal before finally dismissing a  
6 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779  
7 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and  
8 unless Durand either files a fully complete IFP application or pays the \$402.00 filing fee  
9 for a civil action, the only alternative is to enter a third order setting another deadline. But  
10 the reality of repeating two ignored orders is that it often only delays the inevitable and  
11 squanders the Court’s finite resources. The circumstances here do not indicate that this  
12 case will be an exception: there is no hint that Durand needs additional time or evidence  
13 that he did not receive the Court’s order. Setting a third deadline is not a meaningful  
14 alternative given these circumstances. The fifth factor thus favors dismissal. Having  
15 thoroughly considered these dismissal factors, the Court finds that they weigh in favor of  
16 dismissal.

17 It is therefore ordered that this action is dismissed without prejudice based on  
18 Plaintiff Roberto Durand’s failure to file a fully complete IFP application or pay the full  
19 \$402.00 filing fee in compliance with this Court’s September 15, 2022, and November 22,  
20 2022, orders.

21 It is further ordered that Durand’s incomplete applications to proceed *in forma*  
22 *pauperis* (ECF Nos. 8, 9) are denied.

23 It is further ordered that the Clerk of Court is directed to enter judgment accordingly  
24 and close this case. No other documents may be filed in this now-closed case. If Durand  
25 wishes to pursue his claims, Durand must file a complaint in a new case.

26 DATED THIS 7<sup>th</sup> Day of February 2023.

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MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE